



MICHAEL A. HARTSELL  
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In Pro Per

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL A. HARTSELL

Plaintiff,

v.

COUNTY OF SAN DIEGO;  
SAN DIEGO COUNTY DEPUTY  
SHERIFF TRENTON STROH;  
DOES 1-15,

Defendants.

Case No.

**16 CV 1094 LAB JMA**

COMPLAINT FOR DAMAGES;  
DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, in pro per, and hereby alleges:

This lawsuit for money damages is brought pursuant to the provisions of 42 U.S.C. § 1983 due to violations by Defendants of Plaintiff's constitutional rights under the Fourth Amendment to the U.S. Constitution. Supplemental claims are also brought pursuant to California law.

**JURISDICTION**

1. Federal jurisdiction is founded upon the existence of a federal question, the Civil Rights Act, 42 U.S.C. § 1983 and lies under 28 U.S.C. § 1331. The remaining causes of action arise under the supplemental jurisdiction of this Court and lie under 28 U.S.C. § 167.

**VENUE**

2. Venue in the Southern District of California is proper because the injuries to Plaintiff occurred herein and further because the Defendants are believed to reside in said district.

**PARTIES**

## PARTIES

3. Plaintiff MICHAEL A. HARTSELL, (hereinafter "Plaintiff") was at all material times mentioned herein was a resident of the City of Vista, in the State of California.
4. The COUNTY OF SAN DIEGO ("the COUNTY"), is and was at all times mentioned herein a political sub-division of the State of California and is the employer of Defendants SAN DIEGO COUNTY DEPUTY SHERIFF STROH and DOES 1-15, who performed all of the herein alleged acts for, and in the name of, the COUNTY.
5. Plaintiff alleges that all the Defendant Officers acted in their individual capacities, in the course and scope of their employment, and under color of law.
6. Regarding all actions and causes of action herein alleged and stated, all defendants (including all DOE defendants) violated rights held by Plaintiff which were clearly established and which they had a mandatory duty to uphold. No reasonable official similarly situated to any of the Defendants could have believed that his/her conduct was lawful or within the bounds of reasonable discretion. All Defendant Officers, including all individual DOE defendants, thus lack immunity from suit or liability. This extends both to statutorily created immunity and to the judicially created doctrine of "qualified immunity".
7. Prior to the filing of this complaint and on or about November 5, 2015, Plaintiff filed a written claim with the COUNTY OF SAN DIEGO for the injuries alleged herein as required by, inter alia, California Government Code §§ 905, 905.2 and 945.4. On or about December 18, 2015, his claim was formally denied in writing. The administrative claims process need not be followed as a prerequisite to bringing suit as to the claims brought under 42 U.S.C. § 1983. Patsy v. Board of Regents, 457 U.S. 496 (1982); Heath v. Cleary, 708 F.2d 1376, 1378 (9th Cir. 1983).
8. At all material times mentioned herein, Defendants SAN DIEGO COUNTY

1 DEPUTY SHERIFF TRENTON STROH ("DEPUTY STROH") and DOES  
2 1-15, (collectively referred to as the Defendant Officers) were duly constituted  
3 law enforcement officers employed by the SAN DIEGO COUNTY SHERIFF'S  
4 DEPARTMENT and are charged with administering and maintaining laws in the  
5 jurisdiction of the COUNTY OF SAN DIEGO and State of California. Thus,  
6 they were the agents, servants, and/or employees of the COUNTY OF SAN  
7 DIEGO and in doing the acts herein alleged, were acting within the course and  
8 scope of their agency and/or employment, and with the permission, consent and  
9 authority of the COUNTY OF SAN DIEGO. The acts of the Defendants were  
10 also done under the color and pretense of the statutes, ordinances, regulations,  
11 customs and usages of the State of California.

#### 12 GENERAL ALLEGATIONS

- 13 9. On May 21, 2015 at approximately 5:00 am, a federal search warrant was  
14 executed at 2915 Hutchinson Street, Vista, California by a DEA organized task  
15 force consisting of federal, state and local law enforcement officers, including  
16 the COUNTY OF SAN DIEGO Sheriff's Department. This address is  
17 HARTSELL's single family home. A federal arrest warrant for HARTSELL  
18 was also executed on the same day.
- 19 10. When the agents arrived, they encountered a locked metal gate approximately  
20 half way up the driveway to the residence. Upon arrival, a motion light came on  
21 as agents disabled a surveillance camera above the gate and began trying to cut  
22 the locks on the gate. Two padlocks were cut, and the right side of the gate was  
23 opened, but the agents were unable to open the left side of the gate.
- 24 11. After approximately 30-45 seconds of trying to get through the gate, agents saw  
25 2 men standing at the top of the driveway just outside of the garage to the  
26 residence. The warrant team was told that there was a "compromise" as the 2  
27 men began retreating back towards the residence. An agent called the remaining  
28 entry team to the gate. They mustered up and began walking towards the

1 residence. HARTSELL was NOT one of these two men, and does not admit  
2 there were 2 men, although a man named Tony Osterholt, lives in a motor home  
3 parked on the driveway, and he could have been outside.

4 12. HARTSELL was inside his bedroom with his mechanic named Mike Ferguson.  
5 They had just spent all night completing the repair of a transmission in  
6 HARTSELL's Dodge Ram truck, which was parked in the garage. The two of  
7 them saw, on the surveillance camera, men mustering outside the house. When  
8 Mike said "it's the cops," both HARTSELL and Mike ran out the back door. No  
9 perimeter had yet been set up.

10 13. The agents assert that the team was advised that there was a "compromise" and  
11 two male subjects had observed them. Upon arrival at the residence, an agent  
12 observed the garage door was open, and he instructed the team to enter the house  
13 through the garage. As the entry team entered the garage it was allegedly  
14 announced multiple times, "Sheriff's Department with a search warrant  
15 demanding entry!" HARTSELL was gone and didn't clearly hear anything but  
16 indecipherable yelling because he was too far away.

17 14. After HARTSELL ran out the back door, he climbed and jumped over an eight  
18 foot wooden fence and landed in a yard where Ferguson was waiting. There was  
19 a second fence, which Ferguson climbed, and ran away. HARTSELL could not  
20 climb that particular fence, so he looked for another exit. The neighbor woke up,  
21 HARTSELL ran, climbed over the fence where it was more accessible, but upon  
22 landing hit his head. He crawled under a bush and passed out.

23 15. Meanwhile an agent breached the door from the garage into the residence and  
24 entered. Plaintiff's adult daughter was located in her bedroom and detained.  
25 Noone else was home. An agent announced via radio that he believed the 2 men  
26 had run out the back door and that one of the 2 was HARTSELL.

27 16. Several Sheriff's deputies were instructed to take two vehicles to set up a  
28 perimeter in an attempt to capture and arrest HARTSELL. The deputies did so,

1 and requested additional assistance from patrol deputies with the Sheriff's Vista  
2 Sub-station, and specifically called for a K- 9 deputy from the Sheriff's Valley  
3 Center Station.

- 4 17. DEPUTY STROH arrived on scene with his K-9 partner "Bubo" after an  
5 unknown period of time. After some period of searching, neighbors directed the  
6 deputies where they had seen HARTSELL run through their property and where  
7 HARTSELL was last seen. Deputy STROH and Bubo, along with several other  
8 deputies, began tracking where they believed HARTSELL had gone over a  
9 fence.
- 10 18. STROH and other deputies claim they continued to give several warnings that  
11 they had a K-9 and he would bite if a subject was located. HARTSELL  
12 eventually regained consciousness as he heard the command "show me your  
13 hands." He complied by extending his arms straight in front of him.  
14 HARTSELL looked to his left and saw Deputy STROH holding Bubo on a  
15 leash. Agents again commanded "show me your hands" but he had already  
16 complied by extending his arms straight in front of him.
- 17 19. The next thing that happened was that STROH let Bubo off the leash without  
18 warning. Bubo ran to where HARTSELL was laying on the ground and bit  
19 HARTSELL's extended left arm several times. DEPUTY STROH has admitted  
20 that HARTSELL eventually showed his hands, but when this occurred is in  
21 substantial dispute. HARTSELL immediately began screaming in pain and the  
22 Deputy told him to crawl out toward him. HARTSELL asked that the dog be  
23 called off, because any movement caused Bubo to bite harder. HARTSELL was  
24 forced to crawl toward the Deputy with Bubo clamped toward his left arm.  
25 When HARTSELL got adjacent to the Deputy, Bubo ignored commands to  
26 release for at least 30 seconds. Eventually, Bubo was forced to let go and  
27 HARTSELL was placed under arrest, in handcuffs behind his back, with a  
28 severe bleeding injury to his arm. The Vista Fire Department was called.

HARTSELL was lifted to his feet and put in the back of a police car. He was treated at the scene and transported by Sheriff's Deputies in a police car to Tri-City Hospital for further treatment, where state and federal agents argued over who would be responsible for payment of the medical bills. HARTSELL's request for an ambulance was denied. He remained in handcuffs until he arrived at the hospital.

20. Upon their return to the house, Deputies were overheard bragging that they had "f\*\*\*ed (HARTSELL) up good."

21. Doctors at Tri-City hospital diagnosed HARTSELL with a "severe" upper left arm (left axilla and left shoulder" multiple deep tissue injury wounds requiring two incisions and drainages with skin grafting and "negative-pressure wound therapy." Due to his diminished pulse, there was concern that his brachial artery had been lacerated or punctured. A clot was identified and surgically treated.

22. He was discharged from Tri-City after eight days on May 29, 2015. He was taken to MCC and booked, and seen by a doctor and rejected his booking for medical reasons. He was taken back to Tri-City and readmitted and was subsequently discharged on June 24, 2015. He was transferred back to MCC and booked. For unknown reasons he was not timely arraigned as required by FRCrP 5. The day he was released on bail, he was readmitted to Tri-City on July 29, 2015 after he developed a left arm abscess which required multiple debridements, further "negative-pressure wound therapy" and additional skin grafts. He was discharged from Tri-City on August 2, 2015.

**FIRST CLAIM FOR RELIEF**  
**42 U.S.C. § 1983**  
**UNREASONABLE SEIZURE (EXCESSIVE FORCE)**  
**AGAINST THE DEFENDANT OFFICERS**

23. Plaintiff refers to and incorporates by reference Paragraphs 1 through 22 as though fully set forth herein.

24. A reasonably prudent officer knows that a person cannot be subjected to

1 excessive force.

- 2 25. The force in this case was excessive under the applicable legal standard: “First,  
3 (the Court) must assess the severity of the intrusion on the individual's Fourth  
4 Amendment rights by evaluating the type and amount of force inflicted.”  
5 “Second, (the Court) evaluates the government's interest in the use of force.”  
6 “Finally, (the Court) balances the gravity of the intrusion on the individual  
7 against the government's need for that intrusion.” Glenn v. Washington County,  
8 673 F.3d 864, 871 (9th Cir. 2011)(citing Graham v. Connor, 490 U.S. 386,  
9 (1989).) The Court must assess not only the amount of force used (and the  
10 severity of the resulting injury), but also type of force used and the potential  
11 harm it may cause. Lowry v. City of San Diego, 2016 WL 1273183 \*4 (9<sup>th</sup> Cir.  
12 4/1/16)
- 13 26. The Ninth Circuit has repeatedly held that deploying a police dog to effectuate  
14 an arrest is a “severe” use of force. See Smith v. City of Hemet, 394 F.3d 689,  
15 701–02 (9<sup>th</sup> Cir. 2005)(en banc)(noting that use of a police dog is “the most  
16 severe force authorized short of deadly force”); Chew v. Gates, 27 F.3d 1432,  
17 1441 (9<sup>th</sup> Cir. 1994)(holding that the use of a police dog was a “severe” use of  
18 force); Miller v. Clark County, 340 F.3d 959, 964 (9th Cir. 2003)(concluding  
19 that use of a police dog was a “serious” intrusion on the plaintiff's Fourth  
20 Amendment interests).
- 21 27. Further, the handcuffing after injury “substantially aggravated the intrusion and  
22 aggressiveness” of the arrest/detention. See U.S. v. Bautista, 684 F.2d 1286,  
23 1289 (9th Cir.1982). The Ninth Circuit has held that excessively tight  
24 handcuffing can constitute a Fourth Amendment violation, where a person was  
25 demonstrably injured by the handcuffs or their complaints about the handcuffs  
26 being too tight were ignored by the officers. See e.g., Wall v. County of Orange,  
27 364 F.3d 1107, 1109-12 (9th Cir. 2004); LaLonde v. County of Riverside, 204  
28 F.3d 947, 952, 960 (9th Cir. 2000)(arrestee complained to officer who refused to



loosen handcuffs); Palmer v. Sanderson, 9 F.3d 1433, 1434-36 (9th Cir. 1993)(arrestee's wrists were discolored and officer ignored his complaint); Hupp v. City of Walnut Creek, 389 F.Supp.2d 1229, 1232-33 (N.D. Cal. 2005).

28. In committing the acts alleged herein, the Defendants violated, without any defense, Plaintiff's clearly established constitutional right under the Fourth Amendment to the United States Constitution to be secure in his person from the use of unreasonable and excessive force, in that the force applied to arrest/detain Plaintiff was in contravention of constitutional and statutory duty, was in excess of any force required to address the circumstances, was grossly out of proportion to any need for force, was not employed in good faith, and was intended and substantially certain to cause serious bodily injury. These rights were clearly established at the time. For these reasons, Plaintiff is entitled to recover damages pursuant to Title 42 U.S.C. §1983, et seq.

29. By reason of the acts alleged above, Plaintiff did sustain great emotional distress and shock and injury to his person and nervous system, all to Plaintiff's damages in an amount to be proven at trial.

30. As a direct and proximate result of the acts and omissions alleged herein, Plaintiff is entitled to general and special damages from the Defendants in an amount to be proven at trial.

31. In doing the acts alleged herein the Defendants acted maliciously and with reckless and callous disregard for the rights and feelings of Plaintiff and by reason thereof Plaintiff demands exemplary and punitive damages in an amount to be proven at trial.

**SECOND CLAIM FOR RELIEF  
NEGLIGENCE, UNDER CALIFORNIA LAW  
ALL DEFENDANTS**

32. Plaintiff refers to and incorporates by reference Paragraphs 1 through 22 as though fully set forth herein.

33. By the acts alleged above, the Defendant Officers were negligent and breached



1 their duty of due care owed to Plaintiff, thereby causing the injuries and severe  
2 emotional distress as described in the aforementioned Factual Allegations.  
3 Plaintiff is therefore entitled to general and compensatory damages in an amount  
4 to be proven at trial.

5 34. By reason of the acts alleged above, Plaintiff did sustain great emotional distress  
6 and shock and injury to his person and nervous system, all to Plaintiff's damages  
7 in an amount to be proven at trial.

8 35. As a direct and proximate result of the acts and omissions alleged herein,  
9 Plaintiff is entitled to general and special damages from the Defendants in an  
10 amount to be proven at trial.

11 **THIRD CLAIM FOR RELIEF**  
12 **BATTERY UNDER CALIFORNIA LAW**  
**ALL DEFENDANTS**

13 36. Plaintiff refers to and incorporates by reference Paragraphs 1 through 22 as  
14 though fully set forth herein.

15 37. By reason of the intentional acts of Defendants, Plaintiff was unlawfully  
16 subjected to excessive force, assault and battery. In committing the acts alleged  
17 herein, the Defendant Officers acted with extreme, precipitous, and unprovoked  
18 force which was substantially certain to cause, and did cause physical and  
19 emotional injury to Plaintiff herein.

20 38. A reasonably prudent officer would have known that the use of any force on the  
21 person of Plaintiff, let alone excessive force, was completely unwarranted and  
22 unlawful.

23 39. By reason of the acts alleged above, Plaintiff did sustain great emotional distress  
24 and shock and injury to his person and nervous system, all to Plaintiff's damages  
25 in an amount to be proven at trial.

26 40. As a direct and proximate result of the acts and omissions alleged herein,  
27 Plaintiff is entitled to general and special damages from the Defendants in an  
28 amount to be proven at trial.

1 41. In doing the acts alleged herein the Defendants acted maliciously and with  
2 reckless and callous disregard for the rights and feelings of Plaintiff and by  
3 reason thereof Plaintiff demands exemplary and punitive damages in an amount  
4 to be proven at trial.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 7 1. For general and compensatory damages against the Defendants in an  
8 amount to be proven at trial;  
9 2. For exemplary and punitive damages against the Defendant Officers in an  
10 amount to be proven at trial;  
11 3. For such declaratory or injunctive relief as may be appropriate;  
12 4. For costs of suit herein, including reasonable attorneys fees pursuant to 42  
13 U.S.C. § 1988; and  
14 5. For such other and further relief as the Court deems proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a jury trial on all claims for relief.

17  
18  
19 Dated: May 5, 2016

Respectfully Submitted,

  
MICHAEL HARTSELL  
Plaintiff in Pro Per